

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

8 | MICHAEL DWAYNE BYARS,

Petitioner,

3:15-cv-00388-RCJ-VPC

10 || vs.

ORDER

11 BRYAN WILLIAMS, SR., *et al.*,

Respondents.

15 This action is a *pro se* petition for writ of habeas corpus by Nevada prisoner Michael Dwayne
16 Byars. Byars was convicted on September 5, 2012, after a jury trial, in Nevada's Tenth Judicial
17 District Court in Churchill County, of five felonies, and he was sentenced as follows:

18	Count 1,	Unlawful User of Controlled Substance Not to Possess Firearm,	Merged with Count 5;
19	Count 2,	Unlawful Use or Being Under the Influence of a Controlled Substance,	18 to 48 months in prison, concurrent with Count 5;
20	Count 3,	Battery by a Prisoner in Lawful Custody or Confinement,	24 to 60 months in prison, concurrent with Count 5;
21	Count 4,	Battery by a Prisoner in Lawful Custody or Confinement,	24 to 60 months in prison, concurrent with Count 3; and
22	Count 5,	Ex-Felon Not to Possess Firearm,	28 to 72 months in prison.

25 Judgment of Conviction, Exhibit 100, pp. 2-3 (ECF No. 31-4, pp. 3-4); *see also* First Amended
26 Judgment of Conviction, Exhibit 139 (ECF No. 32-11).

1 Byars unsuccessfully pursued a direct appeal to the Nevada Supreme Court, as well as a first
2 state post-conviction habeas corpus action. *See* Opinion of the Nevada Supreme Court, Exhibit 136
3 (ECF No. 32-8); Order of Affirmance, Exhibit 185 (ECF No. 33-26).

4 Byars submitted his habeas petition to this Court, initiating this case, on July 27, 2015
5 (ECF No. 8), and his petition was filed on September 17, 2015, after he paid the filing fee (ECF Nos.
6 6, 7). On March 4, 2016, the Court stayed this action pending Byars' completion of a second state
7 habeas action. *See* Order of March 4, 2016 (ECF No. 18).

8 Byars initiated his second state habeas action on November 17, 2015. *See* Petition for Writ
9 of Habeas Corpus (Post-Conviction), Exhibit 162 (ECF No. 33-2). The state district court dismissed
10 that petition, finding it to be successive and barred by the law of the case doctrine. *See* First
11 Amended Order Dismissing Petition for Writ of Habeas Corpus, Exhibit 188 (ECF No. 33-29). The
12 Nevada Supreme Court affirmed on November 18, 2016. *See* Order of Affirmance, Exhibit 190
13 (ECF No. 33-31).

14 Back in this Court, the stay was lifted on February 16, 2017 (ECF No. 24). The respondents
15 filed a motion to dismiss on May 17, 2017 (ECF No. 27).

16 Despite the Court twice *sua sponte* extending the time for Byars to respond to the motion to
17 dismiss (ECF Nos. 35, 38), he did not respond. The failure of a party to file points and authorities in
18 opposition to a motion to dismiss constitutes a consent to the granting of the motion. LR 7-2(d).

19 Moreover, respondents' motion to dismiss is meritorious. Respondents move for dismissal
20 of Ground 1 as barred by the rule of *Stone v. Powell*, 428 U.S. 465 1976). Under *Stone*, "where the
21 State has provided an opportunity for full and fair litigation of a Fourth Amendment claim," federal
22 habeas corpus relief is unavailable for a claim that evidence recovered through an illegal search or
23 seizure was introduced at trial. The *Stone v. Powell* doctrine applies to all Fourth Amendment
24 claims, including claims of illegal stops, arrests, searches and seizures based on less than probable
25 cause, and it applies regardless of the nature of the evidence sought to be suppressed. *Cardwell v.*
26 *Taylor*, 461 U.S. 571, 572-73 (1983) (per curiam). In Ground 1, Byars claims the trial court erred,

1 under the Fourth and Fourteenth Amendments to the United States Constitution, in admitting
2 evidence obtained by means of a blood draw, and evidence obtained by means of an inventory search
3 of his car. *See Petition for Writ of Habeas Corpus*, pp. 3-3D (ECF No. 8, pp. 3-7). Byars had an
4 opportunity for full and fair litigation of these claims in state court, on his direct appeal, and in his
5 two state habeas actions. *See Appellant's Opening Brief*, Exhibit 117 (ECF No. 31-21); Appellant's
6 Reply Brief, Exhibit 128 (ECF No. 32); Opinion of the Nevada Supreme Court, Exhibit 136 (ECF
7 No. 32-8); Petition for Writ of Habeas Corpus (Post-Conviction), Exhibit 142 (ECF No. 32-14);
8 Petition for Writ of Habeas Corpus (Post-Conviction), Exhibit 162 (ECF No. 33-2); Appellant's
9 Informal Brief, Exhibit 176 (ECF No. 33-17); Appellant's Informal Brief, Exhibit 184 (ECF No. 33-
10 25); Order of Affirmance, Exhibit 185 (ECF No. 33-26); Order of Affirmance, Exhibit 190 (ECF No.
11 33-31). The Court, therefore, determines that Ground 1 of Byars' petition is barred by the doctrine
12 of *Stone v. Powell*.

13 **IT IS THEREFORE ORDERED** that respondents' Motion to Dismiss (ECF No. 27) is
14 **GRANTED**. Ground 1 of the petitioner's petition for writ of habeas corpus (ECF No. 8) is
15 dismissed.

16 **IT IS FURTHER ORDERED** that, within 60 days from the date of this order, respondents
17 shall file an answer, responding to the remaining claims in the petitioner's habeas corpus petition.

18 **IT IS FURTHER ORDERED** that, in all other respects, the schedule for further
19 proceedings in this case set forth in the order entered February 16, 2017 (ECF No. 24) shall remain
20 in effect (petitioner will have 60 days following the filing of an answer to file a reply; respondents
21 with then have 30 days to file a response to the reply).

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23 Dated this 29 day of January, 2018

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UNITED STATES DISTRICT JUDGE